different in principle nor in the method of settlement. For in this as in other matters,

"The childhood shows the man
As morning shows the day."

The American School Peace League is trying, with as yet but scant success, to win one day in the year for the glorification of peace. Children are being tempted by prizes to compose and deliver addresses on peace. Publishers are besought to furnish text-books constructed in the spirit of our own age and not after the spirit of knight-errantry. It is clearly possible, it is eminently philosophic, and it is a reasonable demand of a progressive age that human history shall be presented to children in its entirety, not as a panegyric of physical force, but to show the whole broad scope of those movements which have brought us where we are.

These things we are talking about and to some extent trying to do. They should not be depreciated. Yet it must be confessed that holding peace meetings among children may be as barren of results in bringing on the actual reign of peace as they often are among adults. The teacher who would make a positive contribution to this movement must recognize that the real root of the evil we are trying to extirpate lies in the personal conduct and character, and that the true evangel of peace will be the presentation of those ideals, and that message which will bring about in our own experience the suppression of passion and the development of reason in settling our disputes, great and small. Here I think the teacher finds his supreme opportunity. The chief end of education is the development of reason, and where this fails education is but a name. Passion is what we yield to and needs no education; reason is that by which we obtain the mastery, and can only come by the slow processes of training. Now, education is itself essentially a conflict and, because of its usual associations, largely a conflict between individuals, involving emulations, rivalries, strifes. When these are conducted under the inspiration of passion, as they are now to a great extent, they result in some of the worst developments of character, cheating, lying, and all uncharitableness. But under the guidance of reason such conflicts are not only harmless in themselves, but they develop some of the best traits of character, self-reliance, perseverance, joy of victory.

To enthrone the ideals of peace in the school-room is not, therefore, to make school life as insipid as the relation of one boy with a tutor, nor to inaugurate a reign of intellectual death. It is life, rather; the highest life, the true life of reason which is thus given a free field and opportunity to begin the development which makes life's long warfare. But as long as we stupidly maintain that a grown man makes his noblest contribution to his country by going to war, we need not expect to convince our children that fighting is not a better way to carry on the strifes of education than to yield to the sweet reasonableness of a generous peace.

But this supreme opportunity involves also the teacher's greatest difficulty. It is not difficult to persuade children to accept ideals. For whether Napoleon was right or not in saying that "Imagination rules the world," it is certain that imagination rules childhood. Children are quickly fired with the heroic, the chivalrous, the unselfish. And if the whole task of the teacher were simply to kindle the imagination with those ideals to which peace gives the noblest setting the victory over war would not be long delayed. Unfortunately, human nature in children is constantly making its protest against these ideals, and this protest is constantly being supported by the examples of men whom children naturally accept as models. Fathers who have cleared up the distinction for themselves between private and national disputes, so as to justify them in demanding the procedure of reason in one while permitting the arbitrament of war in the other, have not made this distinction clear to their children. Perhaps we ought not to expect them to attempt this feat of logic. Fathers who would feel disgraced by a fist fight over a private dispute will brag about just such a settlement of the disputes of their boys. Meanwhile the children accept this confusion as natural and go on following the practice of their fathers which agrees with human nature and rejecting their ideals which opposes human nature. They settle the greatest disputes they have in the same way their fathers settle the greatest of their disputes.

The teacher is thus sadly hampered and doubtless often discouraged. Nevertheless, the genuine idealist—and no other is fit to be a teacher—will not despair. He will continue to preach "peace to him that is far off and to him that is near." He will continue to hold up to children as a manly ideal the practice of men in private disputes which now prevails among all civilized people. He will trace with patient confidence the gradual development of this practice through many centuries and much obloquy from the most absurd suggestions of ignorant superstition. And with true prophetic fire he will continue to point to the indications multiplying on every hand, the sure harbingers of a development still going on, the steady progress of human opinion and practice from less to more, from individual to national, toward the larger ideal of a world-wide supremacy of reason, which must ultimately prevail.

The Immediate Establishment of an International Court of Arbitral Justice.

By Thomas Raeburn White, of the Philadelphia Bar.

[A paper read at the Conference of the American Society for Judicial Settlement of International Disputes, Washington, D. C., December 21, 1912.]

The project to establish an international court of arbitral justice, recommended by the Second Hague Conference, has received the approval of jurists on both sides of the water. Some of the considerations which commend it are the desirability of building up an international common law through the decisions of a permanent judicial body; the importance of offering a means of securing a judicial decision, rather than a compromise of an international dispute, if such be the preference of the contending powers, and the necessity of a permanent tribunal which can be called upon to decide whether disputes are within the terms of obligatory treaties of arbitration, before such treaties can become of real binding force.

There is another consideration which does not seem to me to have received the attention it deserves—the very great increase of arbitral settlements which would almost certainly and immediately follow the establishment of the court. Without in the least meaning to

question the value of the existing court of arbitration, it is proper to refer to the well-known fact that decisions rendered by temporary tribunals constituted from that court are not strictly judicial in character, but are in many cases the result of compromise. This is inevitable from the method of constructing these tribunals. So long as the contending powers select an equal number of judges for each particular controversy, there will be an equal number of advocates and but one judge in the court. The fact that some members of such tribunals have been great enough to be real judges, notwithstanding the method of their appointment, is the exception which only proves the rule. But, as with individuals, so with nations, there are some disputes which do not admit of compromise. Such disputes will not be, and perhaps ought not to be, submitted to a court so constituted. It is surprising not that so few, but that so many, disputes have been submitted, and so many obligatory treaties of arbitration have been concluded under the existing system.

Very few persons would be willing to submit an important difference with another to the irrevocable decision of one man, of whose identity they were ignorant. If two farmers fall into a dispute over the boundary line of their farms, involving a controversy of a few dollars, it will, if submitted to the courts, be determined by the combined judgment of a jury and one or perhaps three judges, in the lower court, and if appealed, usually by seven more, making a total of twenty-two men impartially chosen, who give their best judgment to the subject. But the boundary disputes of great nations, involving millions or even hundreds of millions of dollars, can be submitted to no court except one, in which the decision will really be made by a single person, whose identity is at the time of the submission unknown. It is no wonder that nations still decline to submit all disputes without reservation to arbitration. I doubt if any of us would agree to submit all our private disputes to a similarly constituted tribunal.

It is improbable that further progress can be made in securing treaties agreeing to submit all disputes to arbitration without reservation until there is a known court of established integrity, ability, and impartiality by which such disputes can be decided. If such court had existed at the time the proposed treaties with Great Britain and France were under consideration by the United States Senate, they would have met much less opposition, and we should hear less about refusing to submit to arbitration the pending questions concerning the Panama Canal.

The undoubted fact that the establishment of the proposed court would lead to a great and immediate increase in the number of cases submitted to decision by arbitral tribunals, deserves a high place in the list of reasons for urging its constitution.

These considerations and others not mentioned urge the establishment of the proposed court. But they equally demand its immediate establishment. International questions press for immediate solution. The existence of the court would be, if not a guarantee of international peace, a powerful factor in its maintenance. This is properly the next step to be taken; it should precede any further attempts to secure treaties binding the contracting powers to submit all disputes to arbitration.

The questions which immediately confront us are whether it is legally possible to establish the proposed court prior to the next Hague Conference, and, if so, whether the effort would not necessarily be attended with so much delay and meet with so many obstacles, that a postponement of the whole matter until the next conference would be the better plan.

First, whether it is possible to establish the court under the plan proposed, prior to the next Hague Conference, depends upon the correct legal construction of the text of the recommendation contained in the final act. The court may be established under the terms of the final act whenever an agreement shall have been reached as to the appointment of the judges and the constitution of the court. The number of powers which must join in the agreement is not stated. If all the nations participating in the Second Hague Conference, or even a majority of them, must so agree, then it is hopeless to attempt anything now. On the other hand, if a small minority, even two or three, may establish the court as recommended, then there is more than a probability that it could be done within the space of a few months. What then does the final act provide?

The words of the recommendation, translated into English, are:

> "The conference recommends to the signatory powers the adoption of the annexed project of a convention for the organization of a court of arbitral justice and its establishment so soon as an agreement shall have been reached upon the selection of the judges and the constitution of the court."

That the way is open for a limited number of powers (even as few as two or three) to make arrangements in the immediate future for the establishment of this court at The Hague will appear from an examination of the text of the final act.

The words of the recommendation above quoted do not indicate that an agreement by all the powers is necessary. It is addressed to all the powers represented at the conference, but contemplates the establishment of the court "so soon as an agreement shall have been reached," without specifying by how many powers. If the intention were to require an agreement by all the powers, joining in the recommendation, which means all participating in the Hague Conference, it would have been so provided. Examining other portions of the final act, we find that when a reference is made to all the powers participating in the conference, the expression "powers who were invited to the Second Peace Conference" is used. It is fair to assume that had it been the intention to require the agreement of all the powers invited to the conference, the same expression would have been used in this instance.

Examining the conventions formally adopted by the conference, we find that even in such cases no unanimous agreement is necessary. They bind in each instance only the "contracting powers," *i. e.*, the powers who sign them, not necessarily all those who were represented at the conference. With substantial unanimity they provide, as in article 93 of the "Convention for the Pacific Settlement of International Disputes," that "the non-signatory powers who were invited to the Second Peace Conference can adhere to the present convention." This clearly shows that it was not ex-

pected that all the nations represented at the conference would sign the convention. But even all the signatory powers need not ratify before the conventions become operative. Substantially all of them provide, as in article 95 of the same convention: "The present convention shall go into effect, as regards the powers that have taken part in the first deposit of ratification, sixty days after the date of the *proces-verbal* of deposit." It should also not be overlooked that provision is made in the conventions that powers desiring to withdraw from them may do so upon giving a specified notice; this shows not only that less than all may concur in establishing a convention, but that some even of that number may withdraw and leave the convention in force as to the remainder. As conventions become operative by the ratification of less than all, and remain operative notwithstanding the withdrawal of a portion of that number, it would be clearly unreasonable to hold that similar language used in the recommendation should be construed to require the agreement of all powers invited to the conference as to the appointment of judges, before any action looking toward the establishment of the court can be legally taken.

There is internal evidence in the annexed draft of the convention to establish the court of arbitral justice that it was not expected to be adhered to by all the powers participating in the Hague Conference. In its opening article it makes reference to the "signatory powers," an expression used frequently in the final act, and which refers to the powers who sign each convention, but does not include all the powers represented at the conference.

Article 21 of the draft provides: "Access to the court of arbitral justice instituted by this convention is open to the contracting powers only." This clearly contemplates the supposition that the convention will be adhered to by a limited number of powers, and that others likely to be involved in international difficulties will not be parties to it. The expression "signatory powers" in article 31, and "contracting powers" in article 32, are used in such manner as to show that the number of powers adhering to the convention is expected to be limited. Article 35 provides a means by which powers who become dissatisfied with the convention may denounce it, and that thereafter it shall be operative as to the other contracting powers only. It is therefore apparent that the court was intended to be established through the co-operation of a limited number of powers, and to remain in force, although all but a very few had ceased to be parties to it.

The conclusion is that there could have been no intention to require the unanimous agreement of all the powers participating in the Second Peace Conference, in order that this court should be legally established at The Hague.

The question then arises, How many need concur? Must a majority concur, or is a minority sufficient? If a minority, how small a minority? In the first place, it should be observed that a majority of the Hague Conference has no legal significance. The assembly of delegates was not a legislative body, but, in the strictest sense, a conference. The vote of a majority had no binding force or legal effect upon the minority. As a majority means nothing, no reason is perceived why a majority must concur in the appointment of judges. But if not a majority, then how many nations must concur? The words themselves give no indication. "As soon as an agreement shall have been reached upon the selection of the judges and the constitution of the court" the conference unanimously recommends the adoption of the project. "An agreement shall have been reached" so soon as two or more of the signatory powers have agreed among themselves as to a method of appointing the judges. Does this not fulfill the condition upon which the recommendation shall take effect? But it may be said the conference could hardly have meant a court of arbitral justice to be established at The Hague, with the prestige of the conference behind it, when only two or three nations had united in establishing it, or would have access to its deliberations. But why not? The conference has unanimously approved the plan and agreed in recommending its adoption. If, as has been seen, conventions may become operative when actually ratified by only a small minority of powers, and may remain operative, though denounced by all but two or three, as might well happen, what obstacle is there to a construction which brings about the same result in this case? It becomes clear that there is no such obstacle, especially when we observe that by article 35 of the draft of the convention establishing the court, it may be denounced by any number of powers, and yet remain operative as to those powers not denouncing it. The court, by the express terms of the convention, might thus remain operative only as to two or three nations. It should be emphasized that the court has been approved in all its details, except as to the manner of selecting judges only, and that will affect no one except the powers which agree. The conference by its recommendation has said to the powers signing it, So soon as any of you shall agree on a method of representation in this court satisfactory to yourselves, you may put it in force, being careful to provide that contracting powers only shall have access to the court (article 21), and that its expenses shall be borne by them (article 31).

None but the contracting powers will be really concerned in the court, except academically, and in that sense the other powers have already approved it. Who would be harmed or would have any right to object? What nation could legitimately question the establishment of a project it had expressly approved, and which affects its rights in no manner whatever, particularly in view of the fact that none could doubt the competency of the contracting powers to establish such a court at The Hague, even if the conference had made no recommendation upon the subject? In the last analysis all that the concurring nations would appropriate would be the name "Hague Court" and the services of a bureau for which they pay.

The conclusion is that the recommendation of the conference, rightly construed, admits of the establishment at The Hague of the court described in the annexed convention by any number of nations who may agree among themselves as to a method of appointing judges, and are willing to undertake the necessary expense.

This conclusion is strengthened by an examination of the report of the Secretary of State of the American delegation at the Second Hague Conference, which con-

tains language clearly indicating that it was the opinion of the delegation that the proposed court could be established by "any number" of powers. But, assuming this construction to be correct, the question still remains whether, as a practical matter, there is sufficient reason to hope for success to justify the United States, for example, in making the effort.

The project failed of adoption because of inability to agree upon the method of appointing judges. This inability to agree was due to the fact that all nations participating in the conference claimed the right to be equally represented in the court. It was agreed, and is agreed, that to be a strictly judicial body the court should not have more than fifteen members. As fifteen cannot be divided by forty-six, it has seemed to follow that the principle of the juridical equality of States must be abandoned, and this view has its powerful exponents. It is contended that, while all nations may be equal before the law, they should not have equal representation in an international court, because of difference in power and influence and therefore in probable volume of litigation.

The method of appointing the judges of the International Court of Prize involved inequality of representation, and doubtless for this reason the recent praiseworthy efforts of the United States to have this court vested with jurisdiction as a general court of arbitration, do not seem to have been crowned with success.

Passing over the apparent impossibility of securing the consent of the weaker nations to inequality of representation, there is an objection to it not without weight. Nations which had not equal representation with others in the court might be, and probably would be, discriminated against, and in such case the discrimination would be done under the forms of law, without any consequent reaction of world sentiment in favor of the weaker power, which is the case wherever there has been oppression through the exercise or threat of violence. It is by no means clear that a body which is to decide the rights of the weak as well as the strong ought not to be equally representative of both, if it is representative of either.

This apparently impossible situation may be met by abandoning entirely the principle of representation, which is fundamentally wrong. Nations are the litigants which will appear before the bar of this court; their representatives, therefore, have no place upon the bench. In order to have a strictly judicial body which will administer justice and not reconcile differences, we should have judges appointed not to represent nations, but solely because they are suitable as to learning and ability for the position. They will, of course, feel an unconscious leaning toward their own countries, but so do municipal judges toward litigants of their acquaintance or station in life, or of their way of thinking in social or political matters. But municipal judges overcome such bias; why not judges of an international court? But they cannot do so unless they owe their appointment not to individual nations, but to a world body, which represents as nearly as may be the combined interests of the world.

This is a matter of great delicacy, and much patience and forbearance will be needed to adjust it. But the problem will not defy solution, if the right principle be adopted. Perhaps the judges might be elected by the Hague Conference or appointed by the president thereof, subject to the approval of the conference, or by a small committee appointed for the purpose. But these difficulties, while serious as applied to the appointment of judges of a court constituted by forty-six nations, become much less, if they do not disappear altogether, when we consider the appointment of judges of a court established by only two or three nations. Even on the erroneous principle of representation, a court with a limited number of judges could be so created. If, for example, we should consider only England, France, and the United States, who have recently signified their willingness to arbitrate all disputes, it does not seem unlikely that they could agree upon the appointment of three judges each, composing a court of nine, for the adjudication of such international difficulties as should be submitted to them by the three nations. A much better way of appointing the nine judges would be for them to be named by some international body, which would apply a better standard of choice to the names under consideration, and the judges in such case would be less inclined to become advocates of their own nation's interests; but even if the principle of representation in the court should be retained, the difficulty encountered by forty-six nations does not exist when it is proposed to establish the court by fifteen or less.

It may be objected that complications would arise if other nations later desired to join in the constitution of the court and have access thereto. Such complications would take care of themselves. Let the court once be established, even though by a limited number of nations only, and its value will soon become so thoroughly demonstrated that no voice will be heard to decree its dissolution, because of any difficulty in the appointment of judges.

On the other hand, if the matter be postponed until the meeting of the Third Peace Conference, there is no certainty that the members of that conference could agree upon a method of appointing judges, and the probability is very great that they could not. If they did not so agree, there is no assurance that they would again adopt such recommendation as now exists, permitting the establishment of an international court through the concurrence of a limited number of powers. There is, therefore, grave danger that if the court is not established now and given an opportunity to demonstrate its usefulness prior to the Third Peace Conference, the golden opportunity will pass, not to return within any definite period of time.

It may be said that the creation of such a court at this juncture would be of little value, because it would have no jurisdiction. Even if this were true, it would not be a legitimate objection; but it is not true. There are many old cases, covered with the dust of years, knocking about the foreign offices of every country in Europe and of our own State Department, which the parties concerned would be glad to have decided no matter how, so long as they were decided without sacrifice of dignity or honor. There could be no better material for the new court to work upon at first than this. Any new judicial body must have time to find itself; it must work out its rule of practice and procedure; it must reconcile the views of its various members, many of

whom in this instance would have been educated in different systems of law, and there could be no better way in which the court could become an organized working body than by applying itself to the decision of questions of fact and law of the character I have mentioned. Of course the important questions would not come immediately unless by accident, but there can be no doubt that as decision followed decision; as the rights of litigants were more carefully defined and fixed; as the manner in which the court approached its work was better understood; as the judicial character of its decrees was recognized, questions affecting the honor and vital interests of nations would not be withheld from it.

Both the President and President-elect of the United States are happily in full accord with the aims and purposes of this society. It is therefore appropriate that this organization should call their attention to the unexampled opportunity which is open to immediately establish an institution which will certainly be of great and lasting benefit to mankind, and perhaps in the course of years may become almost a guarantee of peace among the nations, by providing a means whereby even questions affecting national honor may be decided in the judicial chamber rather than upon the field of battle.

The Appeal of the Navy League.

By Charles Richardson.

The Navy League has recently issued an appeal for signatures to a petition asking Congress to reorganize the personnel of the navy, and to adopt as "a policy for building up the navy a continuing and consistent program of naval construction, to be determined by a Council of National Defense, which should take into consideration the naval programs and military strength of possible opponents."

The obvious purpose of the league is to remove the question as far as possible from the direct control of the people, and to give a council of naval and military experts an almost unlimited power to increase the armies and navies of the United States and to multiply the burdens imposed upon the people and the business of every State and section.

Of course the plan proposed would greatly promote the personal ambitions and interests of the naval and military officers and contractors, and in view of the origin of the petition it is not surprising to find that its "sixty-seven reasons for a strong navy" are exceedingly one-sided and misleading. The limits of this note will not permit a discussion of all of these so-called reasons, but a brief comment upon some of them and upon the paper as a whole may be useful.

As might have been expected, no portrayal of the horrors and miseries of war; no description of its terrible waste of human life and health and treasure; no account of the almost equal loss and suffering caused by the conscription and maintenance of great armies and navies in times of peace, and no fair statement as to the historic results of international arbitrations can be found on the pages of this remarkable appeal. They can also be searched in vain for any allusion to the fact that when one nation increases its fighting forces it causes other nations to do the same, so that their relative strength or power to hurt each other remains as before, and their only change is their mutual progress in the direction of grinding poverty and ultimate bankruptcy. This has been so often demonstrated and is so plain to those who are not afflicted with the special blindness of army and navy advocates that the omission of any allusion to it is particularly noticeable.

Some of the "sixty-seven reasons for a strong navy" are based upon the achievements of our vessels in scientific and humanitarian work and in the suppression of piracy, the destruction of slave ships, and the restraint of barbarism. But these achievements have no bearing on the question of whether it is necessary for us to have what is now understood as a great navy. The usefulness of a marine police sufficient for such purposes is generally conceded, but it by no means follows that we should therefore have a navy larger than we now have.

The old arguments that a great navy is a school of courage and efficiency, and that the money which it costs is paid to the natives of the country which supports it, are urged with apparent ignorance of the fact, so often shown, that these objects can be attained in better and vastly more useful ways.

References are made to occasions when the navies of different nations, including our own, have defeated or prevented the wrongful aggressions of other navies, but there is no mention of the obvious truth that it was the existence of those other navies that made such aggressions possible, and that the only way to avoid them in future is to set the example and use every possible influence to check the increase of navies and to secure their gradual reduction.

The argument that a great navy is necessary for the enforcement of some of our national policies is an evident fallacy, because there is no probability that policies which are in accord with international justice and the rights of others will lead to war, and if we have any policies of a contrary character the sooner they are modified or abandoned the better.

Much stress is laid upon the theory that our own security must depend upon our being strong enough to defeat any other nation; but no effort is made to achieve the impossible task of showing that there is any nation in the world which could gain any permanent advantage by attacking us or any nation which would not have more reasons for helping us to defend ourselves than for fighting us.

Although the petition as a whole is plausibly worded, the arguments already familiar to the peacemakers of the world are more than sufficient for its complete refutation; but if it should be pressed in Congress by the powerful influences now urging its support, it should be vigorously opposed by the organs of public opinion and by the friends and leaders of the great movement for international justice, arbitration, and a world court.

PHILADELPHIA, *January* 20, 1913.

The Panama Canal Bill.

Repeal of the Exemption Clause Proposed By Rear Admiral Chester.

"It is better to be right than to have the Panama Canal." These were the ringing words with which Rear Admiral Chester, U. S. N., retired, closed an impressive address, with the applause of a large gathering of representative men at the Boston City Club on January 9.